

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

DIVERSIFIED BOTANICS, INC.,¹

Debtor.

Chapter 11

Case No. 26-11589 (TMH)

Hearing Date: TBD

Obj. Deadline: TBD

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE REJECTION OF UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY EFFECTIVE AS OF THE PETITION DATE;
(II) ABANDONING CERTAIN PERSONAL PROPERTY AT THE LEASED PREMISES;
AND (III) GRANTING RELATED RELIEF**

Diversified Botanics, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”) respectfully states the following support of this Motion (the “**Motion**”):

RELIEF REQUESTED

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”): (a) authorizing the Debtor to reject the Leases (defined below) identified on **Exhibit 1** to the Proposed Order, including, to the extent applicable, any agreements, amendments, supplements, waivers, subleases, and side letters related thereto, as identified below, with the rejection to be effective as October 7, 2026 (the “**Rejection Date**”) all as set forth in greater detail below; (b) authorizing the abandonment of certain *de minimis* equipment, fixtures, furniture, or other personal property located at such premises (the “**Abandoned Personal Property**”); and (c) granting related relief.

¹ The last four digits of the Debtor’s federal tax identification number are 1813. The Debtor’s mailing address is 12248 S. Lone Peak Parkway, Suite 106, Draper, Utah 84020.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BASIS FOR RELIEF

3. The bases for the relief requested in this Motion are sections 105(a), 363, 365(a), and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Bankruptcy Rules 6006 and 9014.

BACKGROUND

A. General

4. On October 7, 2026 (the “**Petition Date**”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in this Chapter 11 Case, and no request has been made for the appointment of a trustee or examiner.

5. The Debtor was originally formed in 2012 as SSV, LLC, a Nevada limited liability company, which was converted into MIT45, Inc., a Delaware corporation, as of September 30,

2022 and renamed Diversified Botanics, Inc. on or about July 30, 2025. The Debtor operates within the kratom industry – a sector of the botanical products marketplace focused on products derived from the *Mitragyna speciosa* tree, a tropical evergreen tree native to Southeast Asia.

6. The Debtor develops, manufactures, and scales functional botanical products across multiple wellness categories, including performance, recovery, mood and cognition. The Debtor’s brand names include MIT45 Gold, Golden Monk, Kavaa, and I Am Uprising. Its flagship product is MIT45 Gold, which is an innovative, first of its kind kratom extract.

7. Diversified is a science-driven company that develops products well above industry standards. Since its formation, the Debtor has worked to provide a product that puts the consumer first. Recently, there has been widespread confusion about the kratom industry, particularly as it relates to the difference between kratom and 7-hydroxymitragynine (“**7-OH**”). 7-OH is a naturally occurring opioid-like compound of kratom that increases as the kratom leaf degrades. While competitors have produced products with high 7-OH content, at no point has Diversified developed, manufactured, or sold 7-OH products. In fact, Diversified deliberately made the decision in 2023 not to do so given the risks to consumers.

8. While Diversified has been a successful business with approximately \$98 million in annualized revenue at its peak, the recent confusion in the market regarding kratom and 7-OH, among other factors, has created a financial hardship that necessitated the filing of this bankruptcy.

9. Additional information regarding the Debtor’s business, capital structure, and the circumstances leading to the filing of this Chapter 11 Case is set forth in the *Declaration of Ryan Niddel in Support of Debtor’s Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated by reference herein.

B. The Leases to Be Rejected

10. The Debtor does not own any real property for its operations but instead leases the space from several counterparties. Prior to the Petition Date, the Debtor was a party to two (2) unexpired leases of nonresidential real property with respect to their ongoing operations: (1) Denali Lease (defined below); and (2) Everest Lease (defined below) (collectively, the “**Leases**”).

11. First, the Debtor is a party to the Denali Lease for property located at 228 West 12300 South, Draper, Utah 84020 (the “**Denali Property**”), by and between the Debtor and Price Lone Peak West, LLC, dated September 26, 2024 (as may have been amended, modified, or supplemented from time to time) (the “**Denali Lease**”).

12. Second, the Debtor is a party to the Everest Lease for property located at 12248 South Lone Peak Parkway, Draper, Utah 84020 (the “**Everest Property**”, together with the Denali Property, the “**Premises**”), by and between Price Lone Peak Company, LLC dated September 10, 2024 (as may have been amended, modified, or supplemented from time to time) (the “**Everest Lease**”).

13. The Debtor has determined in its business judgment that the Leases do not provide any value to the Debtor or its estate as the State of Utah enacted legislation on May 6, 2026 prohibiting the production and sale of kratom extracts or products made from kratom extracts that are not considered “pure leaf kratom.” Utah Code § 4-45-102(1) (2026). To enable kratom processors such as the Debtor to transition as the new Utah kratom laws are implemented, products not considered pure leaf kratom may continue to be manufactured in Utah until March 6, 2027; provided that it is not offered for retail sale or distribution in Utah, is manufactured and distributed for lawful sale in another state, and does not contain 7-hydroxymitragynine (7-OH) at a level greater than 0.4% of the total kratom alkaloid composition of the products. Utah Code § 4-45-102(5). Because of the new Utah regulations, the Debtor ceased production of its products in Utah

on or about July 31, 2026 and is continuing to lawfully sell its existing product inventory—all of which are below the 7-OH limits under the new law—in other states. The Debtor no longer has a use for the Premises.

14. Prior to the Petition Date, the Debtor vacated the Denali Property and the Everest Property and generally delivered possession to the respective landlords. The Debtor also arranged for a suitable subtenant to take over the Leases, but the landlords have unreasonably withheld their consent to date. As such, the continued obligation to pay rent or otherwise perform under the Leases for essentially vacant property will impose upon the Debtor burdensome administrative costs that will be detrimental to the Debtor's estate. In addition to its obligations to pay rent under the Leases, the Debtor may be obligated to pay certain real property taxes, utilities, insurance, and other related charges associated with the Leases.

15. The Debtor has determined in its business judgment that such costs constitute a wasteful drain of estate assets. Additionally, the Debtor has determined in its business judgment that the ongoing costs of the Leases exceed any meaningful benefits that the Debtor could potentially achieve from assignments or subleases of the Leases. Given these circumstances, the Debtor believes that prompt rejection of the Leases as of the Petition Date is necessary and in the best interests of the Debtor, its estate, and its creditors.

C. Personal Property to Be Abandoned.

16. Additionally, the Debtor has evaluated the Abandoned Personal Property that may be located at the Premises and determined that (a) the Abandoned Personal Property is of inconsequential value or (b) the cost of removing and storing the Abandoned Personal Property for future use, marketing, or sale exceeds its value to the Debtor's estate. Accordingly, to reduce post-petition administrative costs and in the exercise of the Debtor's sound business judgment, the

Debtor believes that the abandonment of the Abandoned Personal Property is appropriate and in the best interests of the Debtor, its estate, and its creditors

ARGUMENT

D. Rejection of the Leases Will Benefit the Debtor’s Estate and Reflects the Debtor’s Sound Business Judgment.

17. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may . . . reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See *Nat’l Labor Relations Bd. v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.” (citation omitted); see also e.g., *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003); *Computer Sales Int’l Inc. v. Fed. Mogul (In re Fed. Mogul Global, Inc.)*, 293 B.R. 124, 126 (D. Del. 2003). Application of the business judgment standard requires a court to approve a debtor’s business decision unless the decision is the product of bad faith, whim, or caprice. *In re HQ Global Holdings, Inc.*, 290 B.R. at 511 (citing *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001)). Further, “[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citation omitted).

18. Rejection of an unexpired lease is appropriate where such rejection would benefit the estate. See *Sharon Steel Corp. v. Nan Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39–40 (3d Cir. 1989); see also *Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992) (explaining that section 365 is “designed to ‘allow[] the trustee or debtor

in possession a reasonable time within which to determine whether adoption or rejection of the executory contract would be beneficial to an effective reorganization.”). Upon finding that a debtor has exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a). *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003); *In re Bradlees Stores, Inc.*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996), *appeal dismissed*, 210 B.R. 506 (S.D.N.Y. 1997); *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtors’ decision to assume or reject an executory contract “should be granted as a matter of course”).

19. The Debtor does not have a use for the Premises. The Leases also are not a source of potential value for the Debtor’s estate, creditor, or interest holders. As such, the continued obligations to pay or otherwise perform under the Leases only adds the potential for burdensome administrative costs that will be detrimental to the Debtor’s marketing efforts. Given these circumstances, to preserve value for its estate by avoiding unnecessary rent and other administrative costs, the Debtor believes that prompt rejection of the Leases is necessary and in the best interest of the Debtor, its estate, and its creditors.

20. Accordingly, the Debtor has determined that the Leases constitute unnecessary drains on the Debtor’s resources and that rejection of the Leases reflect the Debtor’s exercise of sound business judgment.

E. The Court Should Authorize the Rejection of the Leases as of the Rejection Date.

21. The Debtor seeks to reject the Leases effective as of the Rejection Date, *i.e.*, October 7, 2026. While section 365 of the Bankruptcy Code does not specifically address whether courts may order rejection to be effective retroactively, courts in this district and others have held that bankruptcy courts may exercise their equitable powers in granting such a retroactive order

when doing so promotes the purposes of section 365(a). *See, e.g., Thinking Machines Corp. v. Mellon Fin. Servs. Corp. (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028-29 (1st Cir. 1995) (holding that “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively” to the motion filing date); *see also Pacific Shore Dev., LLC v. At Home Corp. (In re At Home Corp.)*, 392 F.3d 1064, 1067 (9th Cir. 2004) (same); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (same); *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. June 23, 2009) (granting debtors’ motion for rejection of certain leases retroactive to the petition date); *TW, Inc. v. Angelastro (In re TW, Inc.)*, No. 03-10785 2004 WL 115521, at *2 (D. Del. Jan. 14, 2004) (holding that bankruptcy courts may approve rejection of a nonresidential lease retroactive to the motion filing date “when principles of equity so dictate”).

22. Courts have further held that the retroactive rejection of executory contracts and unexpired leases may be approved “after balancing the equities” of a case and concluding that such equities weigh in favor of the debtor. *See In re Rupari Holding Corp.*, Case No. 17-10793 (KJC), 2017 WL 5903498 (Bankr. D. Del. Nov. 28, 2018); *In re Chi-Chi’s, Inc.*, 305 B.R. at 399. In balancing these equities, courts typically examine a number of factors, including the costs that a delayed rejection would impose on a debtor. *See, e.g., Constant Ltd. P’ship v. Jamesway Corp. (In re Jamesway Corp.)*, 179 B.R. 33, 33-39 (S.D.N.Y. 1995). Courts also consider whether the debtor has provided sufficient notice of its intent to reject a contract or lease. *See Tenucp Prop. LLC v. Riley (In re GCP CT School Acquisition LLC)*, No. 09-11846, 2010 WL 2044871, at *10–11 (B.A.P. 1st Cir. May 24, 2010) (finding sale and settlement motions, in the aggregate, provided landlord with sufficient and reasonable notice that chapter 7 trustee intended to reject unexpired real property lease, and that Bankruptcy Court had basis to allow rejection to operate retroactively).

23. The facts and circumstances of the Chapter 11 Case and the balance of the equities favor the Debtor's retroactive rejection of the Leases. Without a retroactive date of rejection, the Debtor may incur unnecessary administrative charges.

24. Accordingly, the Debtor believes that it is proper under the circumstances for the Leases to be rejected retroactively, effective as of the Rejection Date.

F. The Abandonment of Personal Property is Appropriate.

25. Further, the abandonment of the Abandoned Personal Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. *See, e.g., In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) ("Clearly, the court should give deference to the trustee's judgment in such matters."). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.* 18.

26. The Debtor has determined that the costs of moving and storing the Abandoned Personal Property would outweigh any benefit to the Debtor's estate. Further, any efforts by the Debtor to move or market the Abandoned Personal Property could unnecessarily delay the Debtor's surrender of the Premises and the rejection of the Leases. Accordingly, it is in the best interests of the Debtor and its estate for the Debtor to abandon the Personal Property located on the Premises.

27. Courts in this jurisdiction have approved relief similar to the relief requested herein. *See, e.g., In re Jordan Health Prods. I, Inc.*, No. 24-12271 (TMH) (Bankr. D. Del. Oct. 31, 2024) (entering an order authorizing and approving procedures to reject executory contracts and

unexpired leases); *In re Infinity Pharmas., Inc.*, No. 23-11640 (BLS) (Bankr. D. Del. Oct. 23, 2023) (entering an order rejecting certain executory contracts and unexpired leases and authorizing abandonment of personal property remaining at rejected locations); *In re The Rockport Co., LLC*, No. 23-10774 (BLS) (Bankr. D. Del. June 29, 2023) (entering an order for procedures to reject executory contracts).

RESERVATION OF RIGHTS

28. The inclusion of the Leases on **Exhibit 1** to the Proposed Order is not an admission by the Debtor that such lease is, in fact, an unexpired lease, and the Debtor expressly reserves all rights in connection therewith. The Debtor further reserves its rights with respect to any existing defaults of the counterparties to the Leases, and all defenses and counterclaims to any rejection-damages claims and Lease-related claims are preserved, including without limitation defenses or counterclaims relating to the expiration of a lease, the landlords' unreasonable refusal to accept the suitable subtenant and mitigate any damages, or a non-debtor party's default.

BANKRUPTCY RULE 6006(F)

29. Bankruptcy Rule 6006(f) requires that a motion to reject multiple executory contracts or unexpired leases:

- a. State in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. List parties alphabetically and identify the corresponding contract or lease;
- c. Be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- d. Be limited to no more than 100 executory contracts or unexpired leases.

30. The Debtor believes that the Motion complies with these requirements.

NOTICE

31. The Debtor will provide notice of this Motion to (i) the U.S. Trustee; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) the United States Securities and Exchange Commission; (iv) Internal Revenue Service; (v) the Office of the United States Attorney for the District of Delaware; (vi) Delaware State Treasury; (vii) Delaware Secretary of State; (viii) the Offices of the State Attorneys General for each state in which the Debtor conducts its business; (ix) parties impacted by the motion; (x) all parties that have requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

REQUEST FOR IMMEDIATE RELIEF & WAIVER OF STAY

32. The Debtor requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[u]nless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered.” Fed. R. Bankr. P. 6004(h). The relief requested herein is essential to avoid the potential accrual of unnecessary administrative expenses. Accordingly, the Debtor submits that, to the extent that Bankruptcy Rule 6004(h) applies, ample cause exists to justify a waiver of the fourteen-day stay.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the Proposed Order, granting the relief requested herein and such other further relief as the Court may deem just and proper.

Dated: October 8, 2026

COOCH AND TAYLOR P.A.

/s/ R. Grant Dick IV

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*Proposed Co-Counsel to the Debtor and
Debtor in Possession*

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

DIVERSIFIED BOTANICS, INC.,¹

Debtor.

Chapter 11

Case No. 26-11589 (TMH)

Ref. Docket No.

**ORDER (I) AUTHORIZING THE REJECTION OF UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND ABANDONMENT OF CERTAIN
PERSONAL PROPERTY; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of Diversified Botanics, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an order (the “**Order**”): (a) authorizing the Debtors to reject certain unexpired leases of nonresidential real property, including, to the extent applicable, any agreements, amendments, supplements, waivers, subleases, and side letters related thereto, as identified on **Exhibit 1** (the “**Leases**”) hereto, with the rejection to be effective as of October 7, 2026 (the “**Rejection Date**”), all as set forth in greater detail below; (b) authorizing the abandonment of certain equipment, fixtures, furniture, and other personal property (the “**Abandoned Personal Property**”) that may be located at the Premises, each effective as of the Rejection Date; and (c) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and

¹ The last four digits of the Debtor’s federal tax identification number are 1813. The Debtor’s mailing address is 12248 S. Lone Peak Parkway, Suite 106, Draper, Utah 84020.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

this Court finding that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. To the extent not previously terminated or abandoned under applicable law prior to the Petition Date, the rejection of the Leases identified on **Exhibit 1** attached to this Order, including to the extent applicable, any agreements, amendments, supplements, waivers, subleases and side letters related thereto, is hereby authorized and approved effective as of the Rejection Date.
3. The interests of the Debtor and its estate in the Personal Property are deemed abandoned as of the Rejection Date pursuant to section 554 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6007.
4. The Landlords may use or dispose of the Personal Property on and after the Rejection Date in their sole and absolute discretion without liability to the Debtor or any consenting third party and, to the extent applicable, the automatic stay is modified to allow such disposition.
5. Notwithstanding the foregoing, the Debtor is not authorized to abandon any Personal Property (physical or electronic) that (a) contains personally identifiable information of

employees, customers or other natural persons or (b) is necessary for the prosecution of this jointly administered bankruptcy case and is not duplicated elsewhere.

6. The Debtor's rights with respect to any existing defaults of the counterparties to the Leases, and all defenses and counterclaims to any rejection damages claims, are hereby preserved.

7. Notwithstanding Bankruptcy Rule 6004(h), 7062, or 9014, or otherwise, the terms and conditions of this Order are effective and enforceable immediately upon its entry.

8. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

EXHIBIT 1

LIST OF UNEXPIRED LEASES TO BE REJECTED

No	Lease	Landlord	Landlord Notice Address
1	Loan Peak Business Peak Lease Agreement	Price Lone Peak West, LLC	Attn: J. Steven Price, Manager 230 East South Temple, Salt Lake City, Utah 84111
2	Lone Peak Business Park Lease Agreement	Price Lone Peak Company, LLC	Attn: J. Steven Price, Manager 230 East South Temple Salt Lake City, Utah 84111